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Magalie R. Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Rm. TW-B204
Washington, D.C. 20554

Re: In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers; CC Docket No. 96-262

Dear Ms. Salas:

Enclosed for filing are an original and eleven copies of the Petition For Clarification OF U.S. Telepacific Corporation. If there are any questions associated with this filing, please contact the undersigned at (202) 637-1026.

Sincerely yours,

Alexander Hoehn-Saric

Enclosure

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Access Charge Reform	)	CC Docket No. 96-262
	)	
Reform of Access Charges Imposed by Competitive Local Exchange Carriers	)	

PETITION FOR CLARIFICATION OF U.S. TELEPACIFIC CORP.

U.S. TELEPACIFIC CORP.

Kenneth K. Okel
Vice President, Regulatory Affairs
U.S. TELEPACIFIC CORP.
515 S. Flower Street, 47th Floor
Los Angeles, California 90071
(213) 213-3000

Karen Brinkmann
Alexander D. Hoehn-Saric
LATHAM & WATKINS
555 11th Street, N.W.
Suite 1000
Washington, D.C. 20004
(202) 637-2200 (phone)
(202) 637-2201 (fax)

Its Attorneys

Dated: June 20, 2001

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
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Access Charge Reform	)	CC Docket No. 96-262
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PETITION FOR CLARIFICATION OF U.S. TELEPACIFIC CORP.

U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific"), by its attorneys, hereby requests that the Commission clarify its *Order*[1] in the above-referenced docket, and establish a simple methodology by which the benchmark rate will be set where a competitive local exchange carrier's ("CLEC's") service area includes territory served by more than a single incumbent local exchange carrier ("ILEC").

SUMMARY

On April 27, 2001, the Commission released its *Seventh Report and Order* in the above-referenced docket. In its *Order*, the Commission concluded "that the benchmark rate, above which a CLEC may not tariff, should eventually be equivalent to the switched access rate of the incumbent provider operating in the CLEC's service area."[2] The *Order*, however, did not address how the benchmark rate should be determined where the CLEC's service area incorporates territories served by two or more ILECs. The *Order* could be interpreted to allow CLECs to (i) choose between the ILEC access rates, (ii) use a benchmark rate that is an average of the relevant ILEC rates, or (iii) charge different benchmark rates within its service area based on the ILEC territory in which an end user resides. Without guidance from the Commission,

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1 *Access Charge Reform*, Seventh Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-262 (April 27, 2001) (the "*Seventh Report and Order*" or the "*Order*").

CLECs will be forced to select a method, file its tariff based on that method and begin charging interexchange carriers ("IXCs") for access services at that rate. If IXCs disagree with the selected benchmark, further disputes and complaints are likely to result. The "critical stability" sought by the Commission and vital to the industry would be undermined.[3]

Of these options, TelePacific urges the Commission to establish a benchmark setting method that is based on an average of the ILEC rates operating in a CLEC's service area or the Metropolitan Statistical Area ("MSA"), where the CLEC enters a new market. As discussed below, using such a method is the most cost effective and efficient solution.

As to the other methods of setting the benchmark, TelePacific anticipates that IXCs would strenuously object to allowing a CLEC the option of choosing which ILEC rate would be used as the benchmark. Similarly TelePacific, and most likely other CLECs, would object to a method that requires CLECs to charge different benchmark rates based on the ILEC territory in which an end user resides. TelePacific's existing access billing facilities do not identify originating and terminating access traffic to individual end users by Competing ILEC[4] territory. TelePacific suspects that other CLEC billing systems are similarly limited. TelePacific would need to specifically develop software and an administrative system to track traffic in this manner. In addition, call record detail recorded by switches may have to be modified or updated to identify the individual ILECs. This method would make the administration of access charges more complex and impose additional costs on TelePacific. Forcing CLECs to use such a methodology for access billing would impose an unfair burden on CLECs.

Regardless of the methodology, however, it is vital that the Commission establish one clear system for determining how the benchmark should be established where multiple

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2 *Order* at ¶ 45.

3 *See Id.* at ¶ 44.

ILECs operate in a CLEC service area. Given the contentious relationship between CLECs and IXCs in the past and the propensity of IXCs to withhold payment, as noted in the *Order*,[5] any ambiguity regarding the benchmark rate may lead to future disputes and complaints between carriers unless the Commission takes preemptive action.

I. THE *SEVENTH REPORT AND ORDER* DOES NOT CLEARLY ADDRESS HOW THE BENCHMARK IS SET IN AREAS SERVED BY MULTIPLE ILECS

TelePacific is a CLEC that offers facilities-based local exchange and exchange access services in California and Nevada. Like many other CLECs, TelePacific's current service area includes territories served by multiple ILECs, including Sprint Corporation ("Sprint"), Verizon California ("Verizon") and Pacific Bell.

The growth of CLECs has not followed the service area boundaries of existing ILEC territories. Within a single MSA,[6] multiple ILECs currently do offer services to end users. For example, in the Los Angeles area both Verizon and Pacific Bell serve different parts of the city, while TelePacific offers service throughout the area. In California alone, twenty-two ILECs operate in various parts of the state.[7] With each ILEC in the nation charging potentially different rates for access services, CLECs that operate in territories with multiple ILECs face the daunting task of determining what is the correct benchmark rate to apply.

In the *Order*, the Commission established that the benchmark rate "should be equivalent to the switched access rate of the incumbent provider operating in the CLEC's service

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4 Competing ILEC is defined in the *Order* at Appendix B, 61.26(a)(2).

5 *Order* at ¶ 23.

6 Although the *Order* uses MSAs as a geographic unit for implementation purposes, traditionally carriers have assessed markets and collected data in terms of central offices ("COs") and LATAs. As noted below, using MSAs adds a level of complexity to the implementation of the Commission's new rules.

7 Based on data reported on the California Public Utilities Commission website.

area."[8] While the Commission has allowed CLECs to use transitional benchmark rates for "those metropolitan statistical areas (MSAs) in which CLECs are actually serving end users on the effective date of these rules," the Commission held that "[i]n MSA where [CLECs] begin serving end users *after* the effective date of these rules, we permit CLECs to tariff rates only equivalent to those of the competing ILEC."[9]

As mentioned above, however, ILEC territories are not delineated by MSAs. Multiple ILECs are operating in the same MSAs. Moreover, where a CLEC's existing service area covers most of a state such as California, many ILECs could be operating in such a large area. The benchmark mechanism set by the Commission does not seem to address the issue.

Where two or more ILECs are operating in a existing CLEC service area or in a new market entered by a CLEC, the applicable benchmark must be determined by the CLEC providing access services to an IXC. As written, the *Order* leaves open how this should be accomplished. Possible methods include the CLEC (i) selecting a single rate from its service area or the new market MSA as the benchmark rate, (ii) using an averaged ILEC rate, or (iii) tracking the access traffic of individual end users and using the ILEC rate where the end users reside. For the reasons set forth below, only an averaged ILEC rate will provide a simple and cost effective solution for carriers.

II. SELECTING A SINGLE THE BENCHMARK BASED ON ONE OF SEVERAL ILEC ACCESS SERVICE RATES

One method of setting the benchmark rate in a service area with multiple ILECs is to select the rate of a single ILEC and apply that to all access traffic originating and terminating in the service area. The benefit of this method is that it is extremely simple to implement and administer. The CLEC need only select the rate, file a tariff and begin charging for access

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[8] *Order* at ¶ 45.

service.

TelePacific, however, anticipates that this method would be contentious where the differential between relevant ILECs' rates were meaningful. If a CLEC were to choose the highest of the relevant ILEC access rates, IXCs would undoubtedly complain and demand that the lowest rate apply. If the carriers were not able to arrive at some negotiated agreement, past experience suggests that self-help action and litigation may result.

III. TRACKING AND BILLING ACCESS TRAFFIC BY COMPETING ILEC TERRITORY IS IMPOSSIBLE USING TELEPACIFIC'S CURRENT TECHNOLOGY

Using existing technology and software, TelePacific's billing system does not identify the Competing ILEC relevant to an end user's access traffic. Without this information, TelePacific cannot determine the volume of access traffic within its service area to or from end users in the territory of an individual ILEC. Similarly, if TelePacific were to move into a MSA that is served by multiple ILECs, its billing system would not distinguish between access traffic originating from or terminating to end users residing in the territory of one ILEC or another.

It is possible for TelePacific to develop such a capability in its billing system, but the process would take time, money and possibly coordination with other carriers to establish a national standard for including ILEC indicators in access call records.[10] Prior to the Commission's *Order*, TelePacific had no need to identify access traffic by the ILEC territory in which their customer resided. Any time and expense associated with constructing and operating a system to collect such information and charge IXCs using the data would be out of the ordinary course of business. Such a requirement places a burden upon TelePacific and other CLECs with

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9 *Order* at ¶ 58 (underline emphasis added).

10 Establishing a method for identifying the ILECs associated with individual calls may require placing ILEC specific indicators in the traffic. In order to avoid conflicting codes

similar billing systems in the form of additional costs not faced by ILECs; a result that TelePacific believes was not the intent of the Commission.

In addition, such a system would be complex and not transparent. CLECs would need to track and aggregate traffic information on all of its end users based on their geographic location and compare that data with the service area boundaries of the relevant ILECs. The volume of traffic to individual end users would vary from month to month and this would be reflected in access service charges to IXCs. In order for IXCs to validate the CLEC's invoices, they would not only need to be able to track the volume of access traffic to and from the CLEC, but also would need to be able to determine in which ILEC territory the end user of each call resided. The IXCs would have to either develop their own tracking systems or be given access to confidential CLEC internal records. IXCs may have difficulty validating the CLECs charges under this benchmark system and payment disputes may arise as a result.

Because of the fiscal and operational burdens that the use of such a benchmark would place on CLECs and the complexities of auditing such a mechanism, TelePacific respectfully requests that the Commission reject this method of setting the benchmark rate.

IV. A SINGLE REASONABLE BENCHMARK FOR SERVICE AREAS INCORPORATING MULTIPLE ILECS SHOULD BE DERIVED FROM THE RELEVANT ILEC ACCESS RATES

The purpose of the *Seventh Report and Order* was to establish a simple and stable method by which CLECs could be reasonably compensated for access services provided to IXCs. The method by which a benchmark rate is set where multiple ILECs are involved should reflect these goals. It should be easy to administer and not unduly burdensome on any group of carriers. A benchmark access rate based on the average of relevant ILECs' rates in a service area or new market MSA would meet these goals.

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for ILECs and establish standards for how and where such indicators will be attached to

There are many ways in which ILECs rates could be averaged. Below TelePacific lists several methods in order of ease of administration.

A. *Establishing A Benchmark Rate By Averaging The Relevant ILEC Access Rates*

The simplest method of establishing a benchmark rate in a service area or in a new market MSA in which multiple ILECs operate is to use the average of the relevant ILECs' access rates. In addition to being simple, this method is transparent. Once an IXC knows the scope of a CLEC's service area or the new market, the IXC will be able to verify what the appropriate CLEC benchmark rate should be. Similarly, CLECs will be able to examine new markets and accurately predict the access rate that they will be charging and therefore will be better able to plan their business expansion.

While simple and predictable, this method most likely will not result in a rate that is directly proportional to the actual volume of access traffic that a CLEC will originate or terminate to end users in the relevant ILEC territories. For example, in California, Pacific Bell provides service to a substantially larger portion of the State rate payers than Verizon. If a CLEC served only the major metropolitan areas in California and the benchmark was a straight average of Verizon's and Pacific Bell's rates, the benchmark would give Verizon's rate disproportionate weight. Conversely, if a CLEC's service area consists of Verizon territory but includes some Pacific Bell areas, an average of the ILECs' rates would give Pacific Bell's rate disproportionate weight.

B. Establishing A Benchmark Rate By Using A Weighted Average Of The Relevant ILEC Access Rates Based On The Number of CLEC End Users In The ILEC Territories

A second method of establishing a benchmark rate would be to use a weighted average of the relevant ILEC access rates based on the number of end user lines a CLEC has in

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traffic, carriers would need to agree upon a national standard.

each of the ILEC territories within its service area or new market MSA. For example, if a CLEC's service area includes two ILEC territories and there are fifty end user lines in one ILEC territory and one hundred in the second ILEC territory, the benchmark would be an average of the two ILEC access rates with the second ILEC rate receiving twice the weight of the first.

The primary advantage of this method is that it most closely reflects the access traffic that will originate and terminate in a particular ILEC territory without having to actually track each call that is made. The CLEC line information is obtainable on a LATA basis[11] and calculating the benchmark would be straightforward. This method would not be as transparent to IXCs as a simple average because it would depend on CLEC information that is generally confidential. An independent audit, however, would resolve any dispute and would be relatively simple. Finally, as with any weighted average, there also would need to method of periodically adjusting the benchmark to reflect the growth of lines in the relevant ILEC territories.

C. *Establishing A Benchmark Rate By Using A Weighted Average Of The Relevant ILEC Access Rates Based On ILEC Traffic Volume In A State*

A more involved method of establishing a benchmark rate would be to establish a weighted average of the relevant ILEC rates based on the volume of traffic reported by the ILEC within a state. For example, if an ILEC reports a volume of traffic in a state that is twice the volume of another ILEC in the state, the first ILEC's access rate would be given twice the weight of the second ILEC's rate in creating an average benchmark rate. The resulting benchmark rate would then be used by a CLEC whose service area incorporated parts of both ILEC territories within the state.

This method would create a benchmark that approximated but did not accurately reflected the access traffic over a CLEC's network in the ILECs territories. The primary benefit

of the method is that both IXCs and CLECs would be able to independently assess what the benchmark rate should be based on the ILEC's publicly filed traffic volume numbers. While the resulting benchmark may better reflect the proportion of CLEC access traffic to each ILEC than a straight average, the benchmark rate would not be directly proportionate to CLEC access traffic sent to end users in the ILECs' territories and not as accurate as an average based on CLEC lines in the ILECs' territories.

It should be noted that CLECs and IXCs may not be able to get ILEC traffic volumes on a MSA basis. Industry data is generated by CO, exchange and LATA and generally not by MSA. This creates a substantial problem under the *Order's* proposed new market rules. A CLEC entering into a MSA with multiple ILECs will not be able to create a weighted average benchmark based on traffic within the MSA but will need to use statewide data. The resulting benchmark may be significantly skewed if the territorial breakdown of the MSA does not mirror that of the state.

Finally, if this method is used to determine the benchmark, the rate will need to be periodically reevaluated to reflect changes in the traffic volumes of the ILECs over time. Under current reporting requirements, ILEC traffic volume data may be close to a year old by the time it is accessible publicly by CLECs and IXCs. The data relevant to such an averaging method is sent to FCC and could be maintained by the Commission on a confidential basis. If the Commission selects this method, it may be in the best position to calculate and publish averaged ILEC access rates that could operate as the benchmark rates. If the Commission were to assume such a role, it would ensure the timeliness of the benchmark rate, avoid potential disputes over

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[11] Carriers generally do not collect information on an MSA basis. As a result, obtaining line information by MSA may be difficult.

how the rate was calculated and provide clear notice to IXCs and CLECs regarding the rates that will be charged.

V. CLARIFICATION WILL PROMOTE COMPETITION AND PREVENT POTENTIAL CONTROVERSY

As CLECs grow and the transition benchmark is phased out, the ambiguity of how to determine the benchmark rate in a service area or a new market MSA with multiple ILECs will become a greater and greater problem. In order to adequately access future revenues and create accurate business models, TelePacific and other CLECs need to be able to predict what the costs and revenues of providing access traffic over the next four years will be in their current and potential markets. Without clarification, CLECs will be at a disadvantage in establishing pricing and grow plans. By acting now, the Commission will enable CLECs to compete more efficiently in the market and will prevent potential disagreements between carriers in the future.

CONCLUSION

For the foregoing reasons, TelePacific urges the Commission to establish a methodology for setting the benchmark in service areas and new market MSAs where more than a single ILEC operates using an average of the ILECs' access rates.

Respectfully submitted,

Kenneth K. Okel
Vice President, Regulatory Affairs
U.S. TELEPACIFIC CORP.
515 S. Flower Street, 47th Floor
Los Angeles, California 90071
(213) 213-3000

Karen Brinkmann
Alexander D. Hoehn-Saric
LATHAM & WATKINS
555 11th Street, N.W., Suite 1000
Washington, D.C. 20004
(202) 637-2200 (phone)
(202) 637-2201 (fax)

Attorneys for U.S. TELEPACIFIC CORP.

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